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# Mahahdir bin Siron v Public Prosecutor

B COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-09-22–02 OF 2022
VAZEER ALAM, AHMAD ZAIDI AND AZMI ARIFFIN JJCA
8 MAY 2024

C *Criminal Procedure — Revision — Conviction on plea of guilt — Sessions court convicted appellant for offences of armed robbery and rape based on appellant's guilty plea — Appellant filed revision against decision — Judicial commissioner dismissed revision application — Whether appellant had actually pleaded guilty to charges with his own mouth — Whether appellant understood charges, nature of his plea and consequences of his plea — Whether there were serious irregularities in sessions court's proceedings — Whether revision was filed at first possible moment — Whether there was appealable error in decision of judicial commissioner in dismissing application for revision — Courts of Judicature Act 1964 s 31 — Criminal Procedure Code ss 51, 323 & 325 — Penal Code ss 376(2), 392 & 397*

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The appellant had pleaded guilty in the sessions court to the charges of armed robbery under s 392 read together with s 397 of the Penal Code ('the PC'), and rape under s 376(2) of the PC. The appellant's guilty plea on both the charges had been accepted by the learned sessions court judge ('the SCJ') as safe, and the appellant was then convicted on the same. For the offence of armed robbery, the SCJ sentenced the appellant to an imprisonment term of five years and three strokes of the rattan whereas for the offence of rape, the appellant was sentenced to 13 years imprisonment and five strokes of the rattan. The sentences were to run consecutively. Discontented with the decision, the appellant applied to the High Court for revision under s 31 of the Courts of Judicature Act 1964 and s 325 of the Criminal Procedure Code ('the CPC') to examine the criminal proceedings before the sessions court as to the regularity of the appellant's guilty plea which had been accepted by the SCJ as safe. The learned judicial commissioner ('the JC') dismissed the appellant's application, hence, the present appeal. The grounds of appeal relied upon by the appellant were: (a) the particulars of the charges and the material facts were read to the appellant in an extremely fast paced, so fast that the appellant being a person certified with learning disability could not have reasonably be expected to understood the nature of his plea, and the consequences of his plea; and (b) based on the video recording extracted from the Court Recording Transcription ('the CRT recording') system, the appellant apparently did not plead guilty with his own mouth yet his guilty plea had been recorded. Based

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on these grounds, the appellant submitted that the plea of guilty was unsafe and should be set aside. A

**Held,** dismissing the appeal, and affirming the conviction and sentence:

(1) It is well established law that the court will generally exercise its revisionary powers where the lower court fails to comply with the provisions of the law, the decision is grossly erroneous, the findings of fact are not supported by evidence, material evidence of the parties are not considered, there has been an error of law or procedure and where the revision is demanded in the interest of public. The primary objective of a revision is to correct a miscarriage of justice which has affected the applicant and the High Court's powers of revision are to be exercised sparingly and judiciously (see para 12). B C

(2) Even though the CRT recording failed to capture some of the voices during the proceeding but through the appellant's gesture, such as nodding his head and body gestures, it was very clear that the appellant had indeed vocalised his guilty plea, which was then relayed by the court interpreter to the SCJ. Further, from the court's careful observation and examination of the CRT recording, the court could hear and see the court interpreter reading certain documents to the appellant and the appellant was seen listening attentively to what was read by the interpreter. Hence, the court could safely conclude that the communication between the interpreter and the appellant were all within the range of distance, which was possible to be heard by the SCJ, the appellant's counsel and the deputy public prosecutor as to what was really said by the appellant. Thus, there could be no doubt in the court's mind that that the appellant had also understood the charges, the nature of his plea and the consequences of his plea (see paras 24–25). D E F

(3) Moreover, the appellant was represented by counsel assigned by the National Legal Aid Foundation ('YBGK') who was there to protect the legal rights and interests of the appellant in court. However, the appellant's counsel never raised any objection as to the alleged non-verbalising of the appellant's pleas of guilt to both charges and the appellant understanding of the nature and the consequence of his plea. From the above explanation and after having viewed the CRT recording played in the open court as well as perused over the appeal records, the court agreed with the JC's findings on this point. There was no basis to rule that there were serious irregularities in the proceedings at the sessions court which warranted the High Court to exercise its revisionary power (see paras 26–27). G H I

(4) The appellant was convicted by the sessions court on 25 October 2020, however, only in August 2021 the appellant applied to the High Court at Muar for revision under s 325 of the CPC. He had the opportunity to

lodge an appeal against the order made by the sessions court but failed to do so within the prescribed timeframe. In short, the revision was not done at the first possible moment, and it took ten months after the appeal period had lapsed for the appellant to seek invocation of the revisionary powers of the High Court. The court therefore held that the failure of the appellant to appeal against an order made by the sessions court under s 51 of the CPC would disentitle the appellant to the relief that he sought through the revisionary powers of the High Court under s 323 of the CPC (see paras 29 & 33).

(5) For all the reasons given, the court did not find any appealable error in the decision of the learned JC in dismissing the application for revision. Having viewed the CRT recording and looking at the JC's grounds of decision, the court found that the JC had exercised his discretion judiciously and there were no substantial and compelling reasons for the court to interfere with the judgment (see paras 34–35).

**[Bahasa Malaysia summary**

Perayu telah mengaku bersalah di mahkamah sesyen atas pertuduhan rompakan bersenjata di bawah s 392 yang dibaca bersama s 397 Kanun Keseksaan ('KK'), dan rogol di bawah s 376(2) KK. Pengakuan bersalah perayu atas kedua-dua pertuduhan tersebut telah diterima oleh hakim mahkamah sesyen yang bijaksana ('HMS') sebagai selamat, dan perayu kemudiannya disabitkan dengan perkara yang sama. Bagi kesalahan rompakan bersenjata, HMS menjatuhkan hukuman penjara lima tahun dan tiga sebatan terhadap perayu manakala bagi kesalahan merogol, perayu dijatuhi hukuman penjara 13 tahun dan lima sebatan rotan. Hukuman-hukuman tersebut berjalan secara berturut-turut. Tidak berpuas hati dengan keputusan tersebut, perayu memohon kepada Mahkamah Tinggi untuk penyemakan di bawah s 31 Akta Mahkamah Kehakiman 1964 dan s 325 Kanun Tatacara Jenayah ('KTJ') untuk penyemakan prosiding jenayah di hadapan mahkamah sesyen mengenai keteraturan pengakuan bersalah perayu yang telah diterima oleh HMS sebagai selamat. Pesuruhjaya kehakiman yang bijaksana ('PK') menolak permohonan perayu, oleh itu, rayuan semasa. Alasan-alasan rayuan yang disandarkan oleh perayu ialah: (a) butir-butir pertuduhan dan fakta material telah dibacakan kepada perayu dengan kadar yang sangat pantas, begitu pantas sehingga perayu sebagai seorang yang disahkan mengalami masalah pembelajaran tidak boleh semunasabahnya diharapkan untuk memahami sifat pengakuannya, dan akibat dari pengakuannya; dan (b) berdasarkan rakaman video yang dipetik daripada sistem Transkripsi Rakaman Mahkamah ('rakaman CRT tersebut'), perayu kelihatannya tidak mengaku bersalah dengan mulutnya sendiri namun pengakuan bersalahnya telah direkodkan. Berdasarkan alasan-alasan ini, perayu berhujah bahawa pengakuan bersalah tersebut adalah tidak selamat dan harus diketepikan.

**Diputuskan,** menolak rayuan dan mengesahkan sabitan dan hukuman tersebut:

(1) Adalah menjadi undang-undang yang mantap bahawa mahkamah secara amnya akan menggunakan kuasa penyemakannya apabila mahkamah rendah gagal mematuhi peruntukan undang-undang, keputusan tersebut adalah suatu kekhilafan yang besar, dapatan-dapatan fakta tidak disokong oleh keterangan, keterangan material pihak-pihak tidak dipertimbangkan, terdapat kekhilafan undang-undang atau prosedur dan apabila penyemakan dituntut demi kepentingan awam. Objektif utama penyemakan adalah untuk membetulkan salah laksana keadilan yang telah menjejaskan pemohon dan kuasa penyemakan Mahkamah Tinggi hendaklah dilaksanakan dengan berhati-hati dan secara kehakiman (lihat perenggan 12).

(2) Walaupun rakaman CRT tersebut gagal merakam sebahagian suara semasa prosiding tetapi melalui isyarat perayu, seperti menganggukkan kepala dan isyarat badan, adalah sangat jelas bahawa perayu sememangnya telah menyuarakan pengakuan bersalahnya, yang kemudiannya disampaikan oleh jurubahasa mahkamah kepada HMS. Selanjutnya, daripada pemerhatian dan pemeriksaan rapi mahkamah terhadap rakaman CRT tersebut, mahkamah dapat mendengar dan melihat jurubahasa mahkamah membacakan dokumen tertentu kepada perayu dan perayu dilihat mendengar dengan penuh perhatian apa yang dibaca oleh jurubahasa tersebut. Oleh itu, mahkamah dengan selamat boleh membuat kesimpulan bahawa komunikasi antara jurubahasa dan perayu semuanya berada dalam lingkungan jarak, yang mungkin boleh didengari oleh HMS, peguam perayu dan timbalan pendakwa raya tentang apa yang sebenarnya dikatakan oleh perayu. Oleh itu, tidak ada keraguan dalam fikiran mahkamah bahawa perayu juga telah memahami pertuduhan, sifat pengakuannya dan akibat pengakuannya (lihat perenggan 24–25).

(3) Selain itu, perayu diwakili oleh peguam yang ditugaskan oleh Yayasan Bantuan Guaman Kebangsaan ('YBGK') yang berada di sana untuk melindungi hak undang-undang dan kepentingan perayu di mahkamah. Walau bagaimanapun, peguam perayu tidak pernah membangkitkan apa-apa bantahan berkenaan dakwaan tidak menyuarakan pengakuan bersalah perayu terhadap kedua-dua pertuduhan dan pemahaman perayu tentang sifat dan akibat pengakuannya. Daripada penjelasan di atas dan selepas melihat rakaman CRT tersebut yang dimainkan di mahkamah terbuka serta meneliti rekod rayuan, mahkamah bersetuju dengan dapatan-dapatan PK mengenai perkara ini. Tiada asas untuk memutuskan bahawa terdapat ketidakaturan yang serius dalam prosiding di mahkamah

sesyen yang mewajarkan Mahkamah Tinggi melaksanakan kuasa penyemakannya (lihat perenggan 26–27).

(4) Perayu telah disabitkan oleh mahkamah sesyen pada 25 Oktober 2020, bagaimanapun, hanya pada Ogos 2021 perayu memohon kepada Mahkamah Tinggi di Muar untuk penyemakan di bawah s 325 KTJ. Dia berpeluang membuat rayuan terhadap perintah yang dibuat oleh mahkamah sesyen tetapi gagal berbuat demikian dalam tempoh masa yang ditetapkan. Ringkasnya, penyemakan tidak difailkan pada kesempatan pertama, dan perayu mengambil masa sepuluh bulan selepas tamat tempoh rayuan untuk memohon kuasa penyemakan Mahkamah Tinggi. Oleh itu mahkamah memutuskan bahawa kegagalan perayu untuk merayu terhadap perintah yang dibuat oleh mahkamah sesyen di bawah s 51 KTJ akan menyebabkan perayu kehilangan hak untuk mendapatkan relif yang dipohon olehnya melalui kuasa penyemakan Mahkamah Tinggi di bawah s 323 KTJ (lihat perenggan 29 & 33).

(5) Atas semua alasan yang diberikan, mahkamah tidak mendapati apa-apa kekhilafan yang boleh dirayu dalam keputusan PK yang bijaksana dalam menolak permohonan untuk penyemakan. Setelah melihat rakaman CRT tersebut dan melihat alasan keputusan PK, mahkamah mendapati bahawa PK telah menggunakan budi bicaranya secara bijaksana dan tidak ada alasan yang kukuh dan meyakinkan untuk mahkamah mengganggu penghakiman tersebut (lihat perenggan 34–35).]

**Cases referred to**

*Emperor v Bankatram Lachiram* (1901) ILR 28 Bom 533, HC (folld)
*Liaw Kwai Wah & Anor v PP* [1987] 2 MLJ 69; [1987] CLJ (Rep) 163, SC (refd)
*Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645; [1995] 2 CLJ 209, CA (refd)
*Muzammil Izat bin Hashim v PP* [2008] MLJU 764; [2009] 2 CLJ 354, CA (refd)
*PP v Sogas Trading* [2020] 10 MLJ 258; [2020] 4 CLJ 410, HC (refd)
*Soo Leot, Re* [1956] 1 MLJ 54b (refd)

**Legislation referred to**

Courts of Judicature Act 1964 s 31
Criminal Procedure Code ss 51, 323, 325
Penal Code ss 376(2), 392, 397
Persons With Disabilities Act 2008

**Appeal from:** *Mahahdir bin Siron v Public Prosecutor* [2022] MLJU 97 (High Court, Muar)

*Lau Yi Leong (with Lim Jia Xian) (Ling & Yi Leong) for the appellant.*
*Atiqah Abdul Karim @ Husaini (Deputy Public Prosecutor) for the respondent.*

**Azmi Ariffin JCA:**

INTRODUCTION

**[1]** The appellant was tried in the Batu Pahat Sessions Court with two charges for offences of armed robbery under s 392/397 of the Penal Code (JC62RS-01–10 of 2020) and rape under s 376(2) of the same Code (JC62JS-07–10 of 2020).

THE CHARGE

**[2]** The charges preferred against the appellants read as follows:

JC62RS-01-10-2020

Bahawa kamu pada 8/10/2020 jam lebih kurang 6.40 pagi bertempat di rumah beralamat di No 8 Jalan Rengit lmpian 1, Taman Rengit lmpian, 83100 Rengit dalam Daerah Batu Pahat, di dalam Negeri Johor Darul Takzim, telah merompak seutas rantai emas dan sebentuk cincin emas, kamu semasa melakukan rompak itu telah menggunakan senjata iaitu sebilah parang kepada mangsa bernama: Ain Nurbatrisyia Binti Nordin, No KP 990709–01–5804. Oleh yang demikian, kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah Seksyen 392 Kanun Keseksaan dibaca bersama seksyen 397 Kanun yang sama.

JC62JS-07–10–2020

Bahawa kamu pada 8/10/2020 jam lebih kurang 6.40 pagi bertempat di rumah beralamat di No 8 Jalan Rengit lmpian 1, Taman Rengit lmpian, 83100 Rengit dalam Daerah Batu Pahat, di dalam Negeri Johor Darul Takzim, telah didapati melakukan rogol ke atas Ain Nurbatrisyia Binti Nordin, No KP 990709–01–8044 dan pada masa yang sama melakukan kesalahan itu telah meletakkan mangsa dalam ketakutan kecederaan ke atas dirinya dengan membawa parang sewaktu merogolnya. Oleh yang demikian kamu didapati telah melakukan kesalahan yang boleh dihukum di bawah seksyen 376(2)(b) Kanun Keseksaan.

**[3]** The charges were read out and explained to the appellant. The appellant pleaded guilty to both the charges. He understood the nature and consequences of his plea. The facts of the case were tendered and marked as exh P1 along with another documentary evidence which were admitted as true by the appellant.

**[4]** The charges were read out and explained to the appellant in the Malay language Bahasa Malaysia explained the language that the appellant understood. The appellant pleaded guilty to both the charges. He understood the nature and consequences of his plea. The facts of the case were tendered and

marked as exh P1 along with other documentary evidence which were admitted as true by the appellant. He was then convicted on the same.

**[5]** The appellant's guilty plea on both the charges had been accepted by the learned sessions court judge as safe. On 25 October 2020, he was convicted on the same.

**[6]** After hearing the mitigation from learned counsel for the appellant and submission in reply by the deputy public prosecutor, the learned sessions court judge sentenced the appellant to an imprisonment term of five years and three strokes of the rattan for the offence of armed robbery and for the charge of rape he was sentenced to 13 years imprisonment and five strokes of the rattan. The sentences were to run consecutively.

**[7]** Dissatisfied, in August 2021 the appellant applied to the High Court at Muar for revision under s 31 of the Courts of the Judicature Act 1964 and s 325 of the Criminal Procedure Code to examine the criminal proceedings before the Batu Pahat Sessions Court as to the regularity of the appellant's guilty plea had been accepted by the learned sessions court judge as safe.

**[8]** After hearing all parties, on 17 January 2022 the learned judicial commissioner declined the application.

**[9]** Aggrieved, on 31 January 2022, the appellant filed an appeal to the Court of Appeal.

**[10]** Hence this appeal.

BRIEF FACTS

**[11]** We now reproduce the facts of the case.

> Siasatan awal mendapati pada 8/10/2020 jam lebih kurang 6.40 hrs, pengadu (A1) telah terima panggilan telefon daripada MERS 999 mengatakan rumah di alamat No 8, Jalan Rengit lmpian 1, Taman Rengit lmpian, 83100 Rengit, Johor telah dipecah masuk. Pengadu kemudian membuat laporan polis sebagai maklumat pertama sebagaimana Report Rengit 1710/20.
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> Pada 8/10/2020 jam lebih kurang 6.30 hrs setelah saksi (A2) selesai menunaikan solat Subuh di Masjid Rengit, dalam perjalanan pulang ke rumah di alamat No 8, Jalan Rengit lmpian 1, Taman Rengit lmpian, 83100 Rengit, Johor, saksi (A2) telah melihat OKT (B1) sedang melarikan diri dengan membawa (1) buah beg laptop di belakang lorong rumah saksi (A2). Saksi (A2) kemudian pulang ke rumah dan dapati rumah miliknya telah dipecah masuk. Semasa itu, mangsa (A3) dan saksi (A4) berada dalam keadaan menangis dan ketakutan.

Saksi (A2) kemudian membuat pemeriksaan di dalam rumah dan dapati (1) buah beg laptop tertulis Designed for Dell yang diletakkan di bahagian ruang tamu rumah telah tiada. Saksi (A2) mengesyaki beg laptop tersebut telah diambil oleh OKT (B1). Saksi (A2) kemudian menaiki motosikal miliknya dan berusaha untuk mencari OKT (B1) dan akhirnya telah menjumpai OKT (B1) di hujung Jalan Besar. Saksi (A2) telah berusaha untuk menangkap OKT (B1) namun begitu OKT (B1) telah bertindak mengacukan parang ke arah saksi (A2). Ekoran itu, saksi (A2) tidak berani untuk menghampiri dan menangkap OKT (B1) dan membiarkan OKT (B1) melarikan diri. Saksi (A2) iaitu pemilik rumah di alamat No 8, Jalan Rengit lmpian 1, Taman Rengit lmpian, 83100 Rengit, Johor telah membuat laporan polis berkenaan kejadian sebenar yang berlaku sebagaimana Report Rengit 1711/20.

Kemudian saksi (A2) pulang semula ke rumah dan sekali lagi membuat pemeriksaan di dalam rumah. Hasil pemeriksaan yang dilakukan didapati beberapa barangan milik saksi (A2), mangsa (A3) dan saksi (A4) telah tiada antaranya (1) buah beg laptop tertulis Designed for Dell, (1) buah laptop jenama Dell warna hitam, (1) buah beg tangan jenama LV warna coklat, (1) utas rantai emas, (1) bentuk cincin emas dan wang tunai RM400. Mangsa (A3) juga telah memberitahu saksi (A2) dan saksi (A4) bahawa dirinya dirogol oleh OKT (B1).

OKT (B1) telah masuk ke dalam bilik mangsa (A3) dengan bersenjatakan parang dan membuka lampu bilik mangsa (A3) serta telah mengarahkan mangsa (A3) untuk masuk ke dalam bilik air dalam keadaan senyap. Kemudian OKT (B1) mengambil (1) utas rantaiemas, (1) bentuk cincin emas dan wang tunai yang berada di dalam tabung di atas meja bilik mangsa (A3). Mangsa (A3) telah berusaha untuk melarikan diri dengan keluar daripada bilik air namun OKT (B1) telah menolak mangsa (A3) ke atas katil dan mencekik leher mangsa (A3) berserta parang yang dipegang pada tangan OKT (B1). Kemudian, OKT (B1) telah mengikat kedua-dua tangan mangsa (A3) pada belakang badan mangsa (A3) dan mengikat mulut mangsa (A3) dengan menggunakan kain. Semasa itulah OKT (B1) membuka baju dan seluar mangsa (A3). Kemudian, OKT (B1) bertindak meramas kedua-dua buah dada mangsa (A3) dan menjilat kemaluan mangsa (A3). Semasa OKT (B1) mahu menjilat kemaluan mangsa (A3), OKT (B1) telah menyelak kain yang digunakan untuk menutup mukanya dan pada masa itulah mangsa (A3) cam wajah OKT (B1). Selepas itu, OKT (B1) bertindak merogol mangsa (A3) dengan memasukkan kemaluannya ke dalam kemaluan mangsa (A3) beberapa kali sebelum memancutkan air mani ke atas perut mangsa (A3). Semasa dirogol, mangsa (A3) berada dalam keadaan yang sangat takut kerana OKT (B1) bersenjatakan parang. Kemudian, OKT (B1) bertindak keluar daripada bilik mangsa (A3) dan terus melarikan diri.

Mangsa (A3) telah dihantar ke Hospital Sultanah Nora Ismail, Batu Pahat untuk dibuat pemeriksaan. Hasil pemeriksaan awal perubatan mendapati terdapat kesan koyakan baru pada kedudukan jam 7 pada hymen mangsa (A3). Laporan pemeriksaan penuh perubatan juga telah mengesahkan mangsa (A3) dirogol kerana terdapat kesan koyakan baru pada kedudukan jam 7 pada hymen mangsa (A3) dan laporan penuh perubatan ini telah disahkan oleh Doktor Falin Nabilah binti Kamal Azwan iaitu saksi (A5) yang membuat pemeriksaan ke atas mangsa (A3).

Pada 15/10/2020 jam lebih kurang 7.20 hrs, OKT (B1) telah ditangkap oleh

sepasukan anggota polis dari Cawangan 9 JSJ IPD Batu Pahat bersama anggota Balai Polis Rengit di alamat Pos 61 Kampung Sungai Punggur Tengah, 83100 Rengit, Johor bersama barangan yang telah dicuri oleh OKT (B1) iaitu satu (1) buah laptop Jenama Dell warna hitam dan (1) buah beg tangan jenama LV warna coklat.

Hasil siasatan dapati OKT (B1) mengaku telah melakukan rompak ke atas rumah saksi (A2) dan melakukan rogol ke atas mangsa (A3). OKT (B1) mengaku telah mencuri (1) buah beg laptop bertulis Designed for Dell, (1) buah laptop Jenama Dell warna hitam dan (1) buah beg tangan Jenama LV warna coklat. OKT (B1) juga mengaku ada menggunakan senjata iaitu sebilah parang semasa merompak (1) utas gelang emas dan (1) bentuk cincin milik mangsa (A3) sebelum merogolnya. Senjata parang yang digunakan oleh OKT (B1) telah dilupuskan ke dalam tali air Sungai Rengit dan usaha untuk mendapatkan senjata tersebut gagal. OKT (B1) telah melakukan pandu arah ke tempat OKT (B1) melupuskan senjata tersebut.

Laporan kawad cam yang telah dijalankan dapati saksi (A2) dan mangsa (A3) cam wajah OKT (B1) yang telah melakukan samun dan rogol. Pengecaman barang kes telah dibuat dan saksi (A2), mangsa (A3) dan saksi (A4) cam barang-barang yang telah dirampas oleh pihak polis ke atas OKT (B1).

Oleh yang demikian, OKT (B1) telah melakukan kesalahan yang boleh dituduh di bawah seksyen 392/397 Kanun Keseksaan dan seksyen 376 Kanun Keseksaan.

## THE RELEVANT PROVISIONS OF LAWS

(a) s 31 of the Courts of Judicature Act 1964:

*Revision of criminal proceedings of subordinate courts*

The High Court may exercise powers of revision in respect of criminal proceedings and matters in subordinate courts in accordance with any law for the time being in force relating to criminal procedure.

(b) s 323 of the Criminal Procedure Code (Act 593):

*Powers to call for records of subordinate Courts*

(1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.

(2) Orders made under sections 97 and 98 are not proceedings within the meaning of this section.

(c) s 325 of the Criminal Procedure Code (Act 593):

*325 Powers of Judge on revision*

(1) A Judge may, in any case the record of the proceedings of which has been called for by himself or which otherwise comes to his knowledge, in his discretion, exercise any of the powers conferred by sections 311,

315, 316 and 317 of this Code.

(2) No order under this section shall be made to the prejudice of the accused unless he has had on opportunity of being heard, either personally or by advocate, in his own defence.

(3) Nothing in this section shall be deemed to authorise a Judge to convert a finding of acquittal into one of conviction.

## THE PRINCIPLES OF LAW CONCERNING THE EXERCISE OF THE REVISIONARY POWERS

**[12]** It is well established law that the court will generally exercise its revisionary powers where the lower court fails to comply with the provisions of the law, the decision is grossly erroneous, the findings of fact are not supported by evidence, material evidence of the parties are not considered, there has been an error of law or procedure and where the revision is demanded in the interest of public. The primary objective of a revision is to correct a miscarriage of justice which has affected the applicant and the High Court's powers of revision are to be exercised sparingly and judiciously (see *Public Prosecutor v Sogas Trading* [2020] 10 MLJ 258; [2020] 4 CLJ 410).

**[13]** In *Liaw Kwai Wah & Anor v Public Prosecutor* [1987] 2 MLJ 69; [1987] CLJ (Rep) 163, the Supreme Court speaking through Abdul Hamid Omar CJ (Malaya) held as follows:

> *Object of revision*
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> We could observe that the power of revision is to be exercised in accordance with the law for the time being in force relating to criminal procedure. In the present case that law is the Criminal Procedure Code. We would also observe that the object of the revisionary powers provided for in the Code is:
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> > ... to confer upon criminal courts a kind of paternal or supervisory jurisdiction, in order to correct miscarriage of justice arising from misconception of law, irregularity of procedure, neglect of proper precautions or apparent harshness of treatment, which has resulted on the one hand in some injury to the due maintenance of law and order, or on the other hand, in some undeserved hardship to individuals.
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> (*Emperor v Nasrullah & Others* [1928] AIR All 287).
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> It is also clear that the High Court may examine the record of proceedings in the subordinate courts 'wherever it considers that in doing so the purpose of justice will be served, as for example, when the record discloses no offence or when the accused is subjected to a vexatious and groundless prosecution.' (*Chettiyar v Ayyar* IRC 47 Mad 722).
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> *Duty of High Court*
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> Basically, the duty lies with the High Court to see that the criminal law is

properly administered by an inferior court. The judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

*Power is discretionary*

The High Court's power sitting in revision is discretionary. As it is, it must therefore be exercised judicially and within the limits and in the spirit of the legislation. 'Discretion' is defined in the *Words and Phrases Legally Defined* (2nd Ed) Vol 2, at p 82 to read:

'Discretion' means that when it is said that something is to be done within the discretion of the authorities that that something is to be done according to the rules of reason and justice, not according to private opinion: *Rooke's Case* [1598] 5 Co Rep 996); according to law, and not humour. It is to be, not arbitrary, vague, but legal and regular. And it must be exercised within the limit to which an honest man competent to the discharge of his office ought to confine himself: Wilson v Rastall [1792] 4 Term Rep at p 757; *Sharp v Wakefield* [1891] AC 173, HL, per Lord Halsbury LC at p 179.

*Maxwell on the Interpretation of Statutes*, 12th Edn, at pp 147–8, under the Heading 'The exercise of discretions must be reasonable', states that — 'Even though an act done is ostensibly in execution of a statutory power and within its letter, it will nevertheless be held not to come within the power if done otherwise than honestly and within the spirit of the enactment. A discretion is to be 'regulated according to known rules of law.' (*Lee v Bude & Torrington Junction Ry Co* [1871] LR 6 CP 576, per Willes J at pp 580–581), and not the mere whim or caprice of the person to whom it is entrusted on the assumption that he is discreet ... 'It is true,' said Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at p 229), 'the discretion must be exercised reasonably'.

**[14]** The principles which should guide the courts in the exercise of the revisionary powers have been clearly set out by Jenkins CJ in *Emperor v Bankatram Lachiram* (1901) ILR 28 Bom 533. In that case His Lordship said that:

this controlling power of the Court is a discretionary power and it must be exercised with regard to all the circumstances of each particular case, anxious attention being given to the said circumstances, which vary greatly.

**[15]** In *Re Soo Leot* [1956] 1 MLJ 54b, Buhagiar J held that:

the powers of the High Court in revision are exercisable at the discretion of the court

and that discretion is untrammelled and free, so as to be fairly exercised according to the exigencies of each case.

## THE INSTANT APPEAL

**[16]** Before us, although the petition of appeal contained several grounds, counsel for the appellant submitted that only two complaint concerning the proceedings before the Batu Pahat Sessions Court were to be canvassed on appeal. The ground relied on were:

(a) the particulars of the charges and the material facts were read to the appellant in an extremely fast paced, so fast that the appellant being a person certified with learning disability under the Persons With Disabilities Act 2008 could not have reasonably be expected to understood:

  (i) the nature of his plea; and

  (ii) the consequences of his plea;

(b) based on the video recording extracted from the court recording transcription (CRT recording) system, the appellant apparently did not plead guilty with his own mouth yet his guilty plea had been recorded.

**[17]** Hence, it was submitted that the plea of guilty is unsafe and should be set aside.

## FINDINGS OF THE HIGH COURT

**[18]** To this, the learned judicial commissioner in his grounds of judgment which we reproduce herein below said:

> (36) It has been submitted that the applicant/accused person is somewhat deficient in intelligence quotient and that he holds a Disabled Person's Card (Kad OKU) issued by the Welfare Department. I am not disputing the authenticity of the Person's Card (Kad OKU) because it is a public document within the meaning assigned by s 74 of the Evidence Act 1950.
>
> (37) A disabled person is not necessarily a person incapable of knowing right from wrong unlike a legally insane person. It merely means that the intellectual capacity is less than the average person on the street. There is nothing on record or in evidence that he is incapable of giving instructions to counsel or that he is unable to understand the proceedings in court. He may not know the intricacies of law and legal argument but so do many people.
>
> (38) A person may be a nuclear scientist but he is a layman when it comes to law. The same way, a lawyer may be lay person when it comes to Epidemiology or Oncology. Disabilities comes in many forms, shades and sizes and the mere fact that one holds a Disabled Person's Card is not a carte blanche that he is incapable of mens

rea or have the capacity to understand his surroundings.

(39) During the course of the proceedings before this court, I asked the applicant of his education background, what he did after dropping out of school and the nature of his job. The applicant told the court that he studied until Standard 6 (now known as Year 6) and did not complete his Form 1 education. He dropped out and started working. Prior to the arrest, he was working for his father in trading in used goods such as electrical goods etc from Singapore and sold them locally.

(40) This court observed that the applicant was able to understand the questions posed and give the appropriate response and he did so without the aid of an interpreter. I did not find him to be a totally deranged person or one who could be described as a moron. His clear and unequivocal response to the questions posed by the court was spontaneous and it shows that he is not lost to the proceedings in court as alleged by learned counsel.

(41) I have taken the liberty of watching the CRT recording several times. I do find that the learned sessions judge in attendance was paying attention to the proceedings. I agree that the audio recording failed to capture some of the voices during the proceedings. I can also see that the court interpreter was in close contact with the accused person and had proper communication with the accused person all within the earshot of the learned sessions court judge.

(42) I am repeating the accusations hurled against the learned sessions court judge and the court interpreter by learned counsel for the applicant here which are as follows:

(i) when the charge of rape was read and explained to the accused, the accused was asked by the court interpreter whether he understood the charge and he kept quiet but the court interpreter told the court that the accused understood the charge against him;

(ii) when the plea was taken, the accused was asked whether he wish to plead guilty but the accused kept quiet while the interpreter told the court that the accused wish to plead guilty;

(iii) When the charge of armed robbery was read and explained to the accused, the accused was asked by the court interpreter whether he understood the charge and he kept quiet but the court interpreter told the court that the accused understood the charge against him;

(iv) when the plea was taken, the accused was asked whether he wish to plead guilty but the accused kept quiet while the interpreter told the court that the accused wish to plead guilty;

(v) the nature and consequences of the plea were not explained to the accused person;

(vi) the CRT recording showed that the accused said nothing during those occasions; and

(vii) the explanations of the charges and the plea were done so fast and therefore the accused (who is an infirmed person) could not possibly understand the charges or the pleas taken.

[43] In short, this application is to accuse the court interpreter and the learned sessions court judge of concocting the records or in cohorts with one or more of the party or to coerce the accused person into pleading guilty is a little too much and I find that this has crossed the line of decency.

[52] The learned deputy public prosecutor told this court that the allegations are untrue as he was personally in attendance during the proceedings in the sessions court and the accused person was in the accused dock behind him and he personally heard the accused person responded to the court interpreter as is reflected in the appeal records.

[53] Learned counsel objected to this because it was a statement from the bar table and not in an affidavit. Learned counsel admitted to this court that he was NOT in attendance before the sessions court during proceedings of this case in the sessions court.

[54] Having observed the CRT as well as perused over the appeal records, I am incline to accept the submissions of the learned deputy. For this reason and others as well, I find that learned counsel has crossed the line of decency.

[55] I express my ardent hope that the Bar Council in Malaysia should look into this.

[56] The conversation between the accused person and the interpreter is within the earshot of the learned sessions court judge. I certainly refused to accept the accusations that the accused said nothing in respect of —

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(a) whether he understood the charge (which was read in the Malay Language) and the accused person is a Malay;

(b) when asked to plea; and

(c) when asked whether he understood the nature and consequences of the plea, when the maximum sentence is reflected in the charge sheet as shown in case JB-42H-18–12 of 2020 as per encl 16 at p 8.

[57] I agree that the voice of the court interpreter is loud and clear but it is no basis to accuse the interpreter of concocting the words allegedly unspoken. Not recorded by the audio system does not automatically means that it was not said. I have perused over the appeal record in case JB-42H-18–12 of 2020 encl 17 at p 5.

[58] It is during the plea in mitigation, that the applicant said this.

(English Translation)

I am 21 years old, I pleaded guilty. I am a young offender and I have no steady job. I helped my mother and the youngest of 6 children. I have no previous conviction, I ask for minimum sentence. Remanded for 14 days, I cooperated with police and saved the court's time.

[59] At the bottom of p 5, I noted that there seemed to be defence counsel who said, this is the same transaction and he asked for a concurrent sentence and said that the accused shows remorse and is repented.

A [60] If indeed he had a defence counsel (from the National Legal Aid Foundation), is learned counsel now also accusing the defence counsel at the court below of equal unethical conduct.

[61] From the CRT recording as well as the written records and the learned deputy public prosecutor who was then the prosecutor in the court below, I am satisfied that:

B

(a) the accused understood the charges that were read and explained to him;

(b) accused did plead guilty;

C (c) the accused understood the nature and consequences of the guilty plea;

(d) the accused admitted that the facts of the case as being true; and

(e) the learned sessions court judge as well as court interpreter did NOT concoct evidence that the accused understood the charges that were read and explained to him or that the accused pleaded guilty or he did understand the nature and consequence of the guilty plea or the brief facts.

D

[62] Having said that, I find it is totally unconscionable to accuse the learned sessions court judge as well as the court interpreter of such heinous crimes against justice.

E [89] I found that there is no irregularity, neither impropriety nor any miscarriage of justice

[90] I have been invited to exercise my powers in revision of the proceedings in the court below and for the reasons I have stated above, the invitation is respectfully declined.

F

## OUR DECISIONS

*Grounds (a) and (b)*

G Whether the appellant had actually pleaded guilty to the charges with his own mouth, understood the charges, nature and the consequences of his plea withdrawals will be addressed together because both the issues are interrelated

**[19]** Before we embark upon a detailed consideration on the grounds of H appeal, it is pertinent to emphasise that the present learned counsel submitted that it was never their submission that the interpreter and/or the learned sessions court judge had acted in cahoots with each other to concoct a guilty plea for the word concoction connotes a deliberate intention to deceive. Thus, that would put the matter to rest.

I

**[20]** Reverting to the present appeal, learned counsel for the appellant argued at length that whether the appellant had actually pleaded guilty to the charges must be determined based on the evidence available before the High Court ie the CRT recording.

**[21]** To elucidate the point that has been taken, learned counsel took us through the CRT recording to highlight the instances where the learned judicial commissioner was said to have wrongly concluded that the appellant must have understood the charges, nature and the consequences of his plea.

**[22]** However, the appellant's version on the event leading to his plea of guilty was diametrically opposite that of the prosecution's version. To appreciate the argument that had been raised before us, it is necessary to highlight the relevant part of learned counsel written submission on the narration of the CRT recording that appears as follows:

> ** *At minute 4:07 of the CRT recording* after the interpreter had read in fast pace the elements of the rape charge against the appellant sans the punishment prescribed by the laws, the interpreter then asked the appellant if he understood (faham) the elements. To this question, the CRT recording shows that the appellant did not answer.
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> ** *At minute 4:19 of the CRT recording*, the interpreter then proceeded to explain the punishment of the rape charge to the appellant. Without asking the appellant whether he understood the punishment, the interpreter straight away asked him whether he wished to plead guilty. The CRT recording again shows that the appellant did not answer, the interpreter did not repeat the plea of the appellant and that the learned Sessions Court Judge was coughing, reading the documents before him and not focusing his attention on the appellant.
>
> ** *At minute 5:00 of the CRT recording*, after reading the armed robbery charge to the appellant at fast pace, this time, the interpreter asked the appellant 'faham eh?' and without waiting for the appellant's answer, the interpreter swiftly proceeded to read out the relevant punishment. In the CRT recording, the learned Sessions Court Judge was seen writing on certain documents and did not focus on the appellant.
>
> ** *At minute 5:10 of the of the CRT recording*, after the interpreter read to the appellant the punishment for the armed robbery charge, the interpreter, again, did not ask the appellant if he had understood the punishment. Instead, the interpreter straight away asked the appellant if he wished to plead guilty. The CRT Recording shows that there was no verbal answer from the appellant.
>
> ** *Starting from minute 6:00 until 11:00 of the CRT recording*, the interpreter was seen reading out the facts of the case (fakta kes) without any pause and only invited appellant to confirm the same by asking 'betul (correct)?' at the end. Again, the CRT Recording recorded no verbal response from the Appellant and the learned Sessions Court Judge appears to be seen busy writing notes on the documents in front of him at this material time.

**[23]** From the net effect of the alleged serious infirmities above, learned counsel strenuously contended that the High Court sitting on appeal had fallen into error in failing to carefully consider whether the appellant has fully

understood the nature of the charges to which he pleaded guilty and that it was unsafe for the sessions court to accept the appellant's pleas in the circumstances as explained above.

**[24]** With respect, we beg to differ. Even though the CRT recording failed to capture some of the voices during the proceeding and there were occasions where we could not exactly hear what was verbally said by the appellant through his own mouth after the charges and the material facts of the charges were read to the appellant but through his gesture, such as nodding his head and body gestures it is very clear to us that that the appellant had indeed vocalised his guilty plea, which was then relayed by the court interpreter to the sessions judge.

**[25]** From our careful observation and examination of the CRT recording we can hear and also see the court interpreter reading certain documents to the appellant and the appellant was seen listening attentively to what was read by the interpreter. Hence, we can safely conclude that the communication between the interpreter and the appellant were all within the range of distance which is possible to be heard by the learned sessions court judge, the appellant's counsel and deputy public prosecutor as to what was really said by the appellant. Thus, there can be no doubt in our mind that that the appellant had also understood the charges and the nature and the consequences of his plea.

**[26]** Moreover, the appellant was represented by counsel assigned by the National Legal Aid Foundation ('YBGK') who was there to protect the legal rights and interests of the appellant in court. However, learned counsel for the appellant never raised any objection as to the alleged non-verbalising of the appellant's pleas of guilt to both charges and the appellant understanding of the nature and the consequence of his plea.

**[27]** From the above explanation given by this honourable court and after having viewed the CRT recording played in the open court as well as perused over the appeal records, we found ourselves in agreement with the learned judicial commissioner's findings on this point. There was no basis to rule that there were serious irregularities in the proceedings at the sessions court which warranted the High Court to exercise its revisionary power.

**[28]** For completeness, we also found it necessary to deal with the other related issue not addressed by the both parties in their written and oral submission before us. However, the learned judicial commissioner had comprehensively deliberated it in his grounds of judgment. This is with regard to the delay in making the present application. We will now lay down our stand.

**[29]** As we have stated earlier, on 25 October 2020, the appellant was convicted by the sessions court. He had the opportunity to lodged an appeal against the order made by the sessions court but failed to do within the prescribed timeframe. However, only in August 2021 the appellant applied to the High Court at Muar for revision under s 325 of the Criminal Procedure Code. In short, the revision was not done at the first possible moment and it took ten months after the appeal period had lapsed for the appellant to seek invocation of the revisionary powers of the High Court.

**[30]** When dealing with this issue, we can do no better than refer to the case of *Mohd Dalhar bin Redzwan & Anor v Datuk Bandar, Dewan Bandaraya Kuala Lumpur* [1995] 1 MLJ 645; [1995] 2 CLJ 209, where the Court of Appeal speaking through Gopal Sri Ram JCA (Hj Shaik Daud JCA, concurring) held as follows:

> The second principle of settled law is that, save in exceptional cases and for very good reasons, there can be no resort had by a party to the revisionary jurisdiction of the High Court when the decision complained of is appealable and no appeal has been lodged: *Dorai Manickam alias Davis v Rex* [1936] 1 MLJ 209.

**[31]** Later, in the case of *Muzammil Izat bin Hashim v Public Prosecutor* [2008] MLJU 764; [2009] 2 CLJ 354, the Court of Appeal through judgment delivered by Hasan Lah JCA stated the following:

> [8] In his judgment the learned High Court Judge referred to and relied on the decision of the Supreme Court in *PP v Raymond Chia Kim Chwee & Anor* [1985] 2 MLJ 436 where it was held, inter alia, that a decision or order made under s 51 of the Code is a final order in the sense that it is final in its effect and therefore appealable under s 307 of the Code. The other case referred to by the learned High Court judge in his judgment *Dorai Manickam alias Davis v Rex* [1936] 1 MLJ 209 where it was held that where a party to criminal proceedings who has had the opportunity to appeal neglects, without very good reasons, so to do, he will not be allowed to call in aid the High Court's revisionary powers.
>
> [12] Learned counsel for the appellant also submitted that the principle of law stated in *Dorai Manickam*'s case is a bad law because the High Court is conferred with extensive powers of revision in criminal proceedings under s 323 of the Code and s 35 of the Courts of Judicature Act 1964 and alternatively he submitted that *Dorai Manickam*'s case does not set out that principle of law at all. We found no merit in that argument. Suffice to say that it has been accepted as settled law that except for very good reasons the High Court should not exercise its revisionary powers when a decision complained of is appealable and no appeal has been lodged.

**[32]** In *Public Prosecutor v Sogas Trading* [2020] 10 MLJ 258; [2020] 4 CLJ 410, the High Court held as follows:

> [17] It is well established law that the court will generally exercise its revisionary powers where the lower court fails to comply with the provisions of the law, the

A decision is grossly erroneous, the findings of fact are not supported by evidence, material evidence of the parties are not considered, there has been an error of law or procedure and where the revision is demanded in the interest of public interest. The primary objective of a revision is to correct a miscarriage of justice which has affected the applicant and the High Court's powers of revision are to be exercised B sparingly and judiciously.

[18] The application for revision must be done at the first possible moment and not after other methods of procedure have been unsuccessfully adopted (*Dorai Manickam alias Davis v Rex* [1936] 1 LNS 12; [1936] 1 MLJ 209). As also stated in *Dorai Manickam*'s case, where an applicant has had the opportunity to appeal but C neglects to do so, the court should not exercise its powers of revision unless there are very good reasons for that neglect:

It is not desirable or possible to lay down hard and fast rules as to when this court will or will not exercise its powers of revision under s 312A of the Code. Each case must be decided according to its own circumstances. It may, however, be laid down D as a broad and general rule that where a party to criminal proceedings has had the opportunity to appeal under s 293 or s 295 of the Code but neglects, without very good reasons, so to do he will not be allowed to invoke the provisions of s 312A and, moreover, that where it is proper that application be made to the court to exercise its powers under that section the application should be made at the first possible E moment and not merely as a forlorn hope after other methods of procedure have been unsuccessfully adopted.

[22] Based upon the principles of law stated above, it is clear that the applicant must provide very good reasons as to why the appeal was not filed and why no extension of time was filed. Only when such reasons are acceptable would then this court be F moved to consider the merits of the application.

[24] Although an applicant is not estopped from filing an application for revision in preference to an appeal such a step is usually taken when the issue that is to be adjudicated upon is one that demands urgency due to a huge public interest or outcry in the matter (see *Public Prosecutor v Rozita bt Mohamad Ali* [2018] 9 MLJ G 1; [2018] 9 CLJ 265; [2018] AMR 843). No such factor of urgency was presented to this court for this application. This application came four months after the decision of the learned sessions court judge was made. This court therefore views this application as an attempt to gain a back door access to this court's powers of revision and in that process expecting that this court caters to the applicant's whims H who initially decided to not appeal against the decision of the learned sessions court judge and then later changed its mind. Such an attempt is not welcomed.

[25] Based on the reasons stated above, this court decides to not exercise its powers to review the decision of the learned SC judge.

I **[33]** In the same vein, we held that the appellant's application to seek the revisionary powers of the High Court when he had failed to appeal against an order made by the sessions court under s 51 of the Criminal Procedure Code would disentitle the appellant to the relief that he seeks through the revisionary powers of the High Court under s 323 of the Criminal Procedure Code.

CONCLUSION

**[34]** For all the reasons given, we do not find any appealable error in the decision of the learned judicial commissioner in dismissing the application for revision.

**[35]** Having viewed the CRT recording and looking at his grounds of decision, we find that the learned judicial commissioner had exercised his discretion judiciously and we find no substantial and compelling reasons for us to interfere with the judgment.

**[36]** We therefore unanimously dismissed the appeal and affirmed the conviction and sentence meted out by the sessions court, which was affirmed by the High Court.

*Appeal dismissed; conviction and sentence affirmed.*

Reported by Dzulqarnain bin Ab Fatar